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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,328	02/12/2004	Tatiana L. Gelardi	SAGOMA	1746

7590 10/18/2006

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EXAMINER	
POLLICOFF, STEVEN B	

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/776,328	GELARDI ET AL.	
	Examiner	Art Unit	
	Steven B. Pollicoff	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-52* is/are pending in the application.

4a) Of the above claim(s) *1-20 and 30-52* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-27 and 29* is/are rejected.

7)☐ Claim(s) *28* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 August 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/21/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I Species I in the reply filed on 8/3/06 is acknowledged. The traversal is on the ground(s) that the method claims are concurrent in scope with some of the product clams and the method could not be produced by another and materially different product other than the product as claimed. This is not found persuasive because Applicant does not specifically explain how the product claims and method claims are concurrent in scope or which product claims are in concurrent scope with the method claims. Applicant also fails to persuasively explain how the method cannot be produced by another materially different product other than the product claimed. Additionally, claims 1-6 and 9-11 include the limitations "internal snaps" and "detents on the securing projection" of claim 1, the "aligning projections" of claim 2, the "projections with enlarged detent ends" of claim 5, the "deep tray having a connecting edge with mounting recesses with aligning projections and securing projections near a top of the deep tray" of claim 10, and the "detents" cooperating with the "holes" of claim 11 which are drawn to a nonelected species. Therefore, only claims 21-29 will be examined.

The requirement is still deemed proper and is therefore made FINAL.

Double Patenting

Claims 21-29 of this application conflict with claims 1-20 of Application No. 10/921,350. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one

application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/921,350. Although the conflicting claims are not identical, they are not patentably distinct from each other because Applicant uses different terminology to claim the same invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Li (US Pat 5,727,681).

With respect to claims 21 and 27, LI discloses a package comprising a stack of one or more individual trays (Li Fig 4), one or more sets of mounting recesses (44) along an edge of each individual tray, one or more sets of clips (Fig 5), wherein the number of sets of clips corresponds to the number of mounting recesses on the individual trays, wherein individual clips in each set are hinged (Fig 5 ref 36) by a living

hinge relative to one another, and wherein the individual clips have connectors (at ref 35) for connecting the clips to the trays.

With respect to claims 22-24, Li discloses that the one or more sets of clips bend along a longitudinal axis for inserting into the one or more mounting recesses on the edges of the trays and that after the bent clips are inserted into the mounting recesses, pressure is applied to an exposed surface until the clips return to their initial configuration and for locking the clips into the mounting recesses. The reduced neck portions/detents (just below ref 35) bend along a longitudinal axis to maintain the trays raised block/ projections (ref 43) in the slot/hole (ref 34) of the clip until released (See Fig 4 and column 3, lines 21-26).

With respect to claim 25, Li discloses that the clips are made of plastic (column 1, lines 66-67).

With respect to claim 26, Li discloses that the clips are trapezoidal (i.e. quadrilateral having at least two parallel sides; see Fig 5 generally) with triangles removed from a longer side surface (i.e. a triangle was removed from the upwardly extending projections at ref 35 such that the raised block of the tray could be more easily received by the reduced neck portion and into the slot) capable of bending the one or more clips along the longitudinal axis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Li (US Pat 5,727,681).

With respect to claim 29, Li discloses locking ribs (Fig 4 ref 43) projecting inward from ends of the mounting recesses on the individual trays and complementary grooves (Fig 5 ref 34) on ends of the one or more clips for receiving and holding the locking ribs. Li also discloses that the clip has a dovetail shape (see triangular portion of projection at 35). Li does not disclose that the mounting recesses have complementary dovetail shapes. However, it would have been an obvious matter of design choice to reshape the mounting recesses of Li to have complementary dovetail shapes so as to provide better complimentary fit between the recesses and clips, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 357 F.2d 669,149 USPQ 47 (CCPA 1966). As to the remainder of claim 29,

Allowable Subject Matter

Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 attached below.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mickey Yu
Supervisory Patent Examiner
Group 3700

SBP 10/13/06